argued that, under the circumstances of the principal case, the corporate interests should be determined by the interests of the contemplated stockholders as well as by those of the present stockholders. This would be a modification of the extreme entity theory, and perhaps represents the view of the English Court of Appeals in *In re British etc. Box Co., supra,* holding that an issue of stock to the public directly after the adoption of the transaction would be conclusive evidence of fraud on the corporation. It could hardly be regretted had the Supreme Court, exercising its equitable powers, brushed aside its technical argument and allowed the corporation relief.

It is probable, however, that, on the facts of the case, the subscribers had an individual remedy against the promoters. Though in most cases in which personal relief has been given the subscriber, the facts show misrepresentation, the broad ground of decision is that the promoter does not treat with the subscriber at arm's length, but in a fiduciary relation by virtue of which the promoter is bound to disclose all the facts. *Brewster* v. *Hatch* (1890) 122 N. Y. 349; *Teachout* v. *Van Hosen* (1888) 76 Ia. 113. The duty of the promoter to the subscriber is based upon the confidence the latter is likely to repose in the organizer of a corporation. 1 Morawetz, Priv. Corp. §545. That duty should therefore continue so long as he in effect acts in such a capacity, and should exist in the principal case, despite the fact that the promoter had also become a stockholder. If this be true, the refusal of the Supreme Court to relax sound legal theory in order to grant an additional remedy, may be supported.

STATE POLICY AND THE FULL FAITH AND CREDIT CLAUSE.—At the period of the Revolution, the doctrine with respect to the effect of foreign judgments *in personam* was unsettled both in England and on the Continent. Black, Judgments (2nd Ed.) Ch. 21, Pt. 2, *passim.* In the American colonies, the same uncertainty existed, *M'Elmoyle* v. *Cohen* (1839) 13 Pet. 312, and it was to promote comity and good will between the states, by enforcing respectful treatment of the acts and judicial proceedings of sister states, that Art. IV., Sec. 3 of the Articles of Confederation was adopted. See *People* v. *Dawell* (1872) 25 Mich. 247, 259. But the clause proved ineffectual; it neither declared what effect such acts should have, nor gave Congress power to legislate with respect thereto. *M'Elmoyle* v. *Cohen, supra.* These defects were eliminated by Art. IV., Sec. 1 of the Constitution, authorizing Congress to prescribe the method of proving sister state judgments and the effect thereof, and by act of Congress, May 26th, 1790, U. S. Comp. Stat. (1901), 677, declaring that "the said records and judicial proceedings * * * shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from whence the said records are or shall be taken."

The decisions involving a construction of Art. IV., Sec. 1, and the Act of 1790 have been remarkably consistent from the beginning. One of the earliest is *Armstrong* v. *Carson's Executors* (1794) 2 Dall. 302. A plea of *nil debent* to a judgment of a sister state was held bad, the court declaring that "if the plea would be bad in the courts of New Jersey, it is bad here." To the same effect are *Mills* v. *Duryee* (1813) 7 Cranch 481, and *Hampton*

v. *M'Connel* (1818) 3 Wheat. 234. In the former, Marshall C. J. asserted that if a judgment in the court which renders it "has the faith and credit of evidence of the highest nature, viz. *record evidence,* it must have the same faith and credit in every other court. * * * And we can perceive no rational interpretation of the Act of Congress unless it declares a judgment conclusive when a court of the particular state where it is rendered would pronounce the same decision." From this interpretation the U. S. Supreme Court has never departed. *Green* v. *Van Buskirk* (1868) 7 Wall. 139, 147; *Hanley* v. *Donoghue* (1885) 116 U. S. 1; *Huntington* v. *Attrill* (1892) 146 U. S. 657, 684.

But Art. IV., Sec. 1 does not forbid an investigation into the jurisdiction of the court of a sister state over the parties and the subject matter, *D'Arcy* v. *Ketchum* (1850) 11 How. 165; *Renaud* v. *Abbott* (1885) 116 U. S. 277, and as to those facts upon which the jurisdiction is based, the court of another state may directly contradict the recitals in the foreign judgment. *Thompson v. Whitman* (1873) 18 Wall. 457. Moreover, Art. IV., Sec. 1 does not prohibit a state from legislating upon the remedy in suits upon the judgments of other states, *Wood* v. *Watkinson* (1846) 17 Conn. 500, 509; *Bank of Alabama* v. *Dalton* (1850) 9 How. 522, provided such legislation is not unreasonable or too stringent. *Christmas v. Russell* (1866) 5 Wall. 290, 305. Furthermore, since the courts of one state do not enforce the penal laws of another state, the courts of the former may look behind the judgment to discover the nature of the original demand. *Wisconsin* v. *Pelican Ins. Co.* (1887) 127 U. S. 265. Nor is it an infringement of Art. IV, Sec. 1 to forbid a citizen by a bill in equity to take advantage of judicial proceedings which he is prosecuting in another state. The state, in such a case, is merely acting *in personam,* and does not thereby discredit the judgment or proceedings of the other state. *Cole* v. *Cunningham* (1889) 133 U. S. 107.

But, with the exception of cases involving jurisdiction or the enforcement of penal laws, it seems beyond controversy that the judgments of one state are binding upon the courts of a sister state. A recent decision of the U. S. Supreme Court, not without the vigorous dissent of four justices, refuses to modify this interpretation. *Fauntleroy* v. *Lum* (1908) 28 Sup. Ct. Rep. 641. The plaintiff, a citizen of Mississippi, obtained in Missouri a judgment against the defendant, also a citizen of Mississippi, on a contract in cotton futures entered into in the latter state, and prohibited by its laws. The Missouri court had jurisdiction, but failed to admit evidence of the Mississippi law. The Supreme Court held that, since the Missouri court had jurisdiction, its judgment was conclusive not only in Missouri but in Mississippi.

White, J., in the minority opinion, contended that the illegality of the original cause of action in Mississippi should preclude a recovery on the Missouri judgment, since, to hold otherwise, would deprive a state of the power to enforce its local police regulations. This view is apparently suggested in part by certain *dicta* in *Andrews* v. *Andrews* (1902) 188 U. S. 14, to the effect that each state has the inherent right to make and enforce its own rules of policy; but the decision turned solely on jurisdiction, as in all cases involving the validity of sister state divorces. It is well recog-

nized in international law that judgments of *foreign* courts lacking jurisdiction, *Rose* v. *Himely* (1818) 4 Cranch 241, and penal judgments, *The Antelope* (1825) 10 Wheat. 66, 123, are not enforcible under the rules of comity. The exception is also well established that a sovereign state is not bound by comity to recognize judgments of a foreign state repugnant to its own policies. See Westlake, Priv. Internat. Law (3rd Ed.), 39, citing Ital. Code, Prel. Art. 12, and the Code Napoléon, Art. 6; *Vincent et Pénaud, Dict. de Droit Internat. Privé, Jugement Etranger, Titre II. Ch. II. Sec. 5*, and cases cited. See also Wharton, Confl. Laws (2nd Ed.) §656. The minority seems to argue that, since the first two exceptions apply to the full faith and credit clause, it is reasonable to suppose that the framers of the Constitution had the third also in mind. A judgment rendered without jurisdiction, however, is not a real exception to Art. IV., Sec. 1, since a judgment so rendered is not properly a judgment at all. *Rose* v. *Himely, supra.* It is also to be noted that, though foreign judgments may be impeached for fraud, Westlake, *supra,* 354, and cases cited, the judgments of sister states may not be. *Simmons* v. *Saul* (1890) 138 U. S. 439, 459; *Mooney* v. *Hinds* (1894) 160 Mass. 469. Hence it can hardly be assumed that the full faith and credit clause was enacted subject to all exceptions to the rules of comity. The purpose of the framers of the Constitution must be sought elsewhere. As pointed out above, that purpose was to avoid uncertainty as to the effect of sister state judgments and the bitterness incident thereto. It is believed that the doctrine of the minority would reintroduce the very evils sought to be eliminated, which the judicial interpretation of Art. IV., Sec. 1, and the act of 1790 has hitherto rendered impossible. That state policy must bow to the constitutional provision, even if the result is an evasion of the local law, has been conceded by state courts from the beginning. *Medway* v. *Needham* (1819) 16 Mass. 157; *Ross* v. *Ross* (1880) 129 Mass. 243; *Van Voorhis* v. *Brintnall* (1881) 86 N. Y. 18.

THE VENDEE'S LIEN AFTER RESCISSION OF THE CONTRACT OF SALE.—The vendee's lien for the purchase money paid and the vendor's lien for the purchase money due are loosely said to be similar, and in several respects this is true. The same equitable consideration that impelled chancery to grant the vendor relief accorded the vendee his remedy, whether the added importance which equity attached to transactions in realty, or the failure of the common law to provide execution against real property. The remedies are similar also in operation, i. e., they are equitable charges against the *res* for payment of money. An attempt has, indeed, been made in the case of *Rose* v. *Watson* (1864) 10 H. L. C. 671, to explain the vendee's lien as a species of trust. It was said in that case that each payment transfers in equity a corresponding portion of the estate, and the vendor becomes trustee of that portion. It is, however, at the time the contract of sale is entered into that the vendor becomes a trustee of land, and payment is unnecessary to the creation of this trust. *Lane* v. *Ludlow* (1825-30) 2 Paine 591. The vendee's method to enforce this trust is by suit for specific performance, not by enforcement of his lien. If the vendor is already trustee of all the land, part payment cannot make him doubly a